



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,651	08/28/2003	Eric M. Boettner	06533-0103	7280

3490 7590 05/03/2005

DOUGLAS T. JOHNSON  
MILLER & MARTIN  
1000 VOLUNTEER BUILDING  
832 GEORGIA AVENUE  
CHATTANOOGA, TN 37402-2289

EXAMINER

ALIE, GHASSEM

ART UNIT	PAPER NUMBER
----------	--------------

3724

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/650,651

Applicant(s)

BOETTNER ET AL.

Examiner

Ghassem Alie

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, and 10 is/are pending in the application.
- 4a) Of the above claim(s) 3-9 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Objections***

1. Claims 1, 3-9, and 11-16 are objected to because of the following informalities:  
in claims 3-9 and 11-6 "previously presented" is a wrong status identifier and should be changed to --withdrawn--.

In claim 1, line 1, "A one piece spoon and straw combination utensil" should be --A one-piece spoon and straw combination utensil--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by McCrea (5,038,476). Regarding claim 1, McCrea teaches a spoon and straw 10 including a tubular portion 22 and a bowl portion 14, wherein the bowl portion 14 is formed of a front wall and a back wall. McCrea also teaches that the front and back walls of the bowl portion 14 are being connected by a left curved wall and a right curved wall and defining a lumen 16 between such front and back walls. See Figs. 1-4 and col. 2, lines 3-57 and col. 3, lines 1-30 in McCrea. The spoon and straw utensil is made of plastic which is inherently formed from one type of resin. McCrea also teaches that spoon and straw combination 10 is a one-piece utensil. McCrea teaches baffle 32, which is disposed between neck 26 and stem 27 and connects neck 26 and stem 27 together, can be alternatively manufactured as internal mold to the bowl end or the mouth end of straw and spoon utensil 10. Therefore, in this case,

Art Unit: 3724

spoon and straw combination utensil is made of one piece rather than three pieces, since baffle 32 is molded to the bowl end or mouth end and does not need to be separated from the utensil. See col. 2, lines 30-39 in McCrea. With respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does depend on the process of making the spoon and straw utensil. See MPEP section 2113.

Regarding claims 2 and 10, McCrea teaches everything noted above except that the utensil is formed on continuous corrugating equipment having pairs of molds and the extrusion process orients the resin molecules for stiffness in the machine direction while expanding the resin extrusion to fill the molds orients the resin molecules for stiffness in the direction traverse to the machine. However, with respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does not depend on the process of making the spoon and straw utensil. See MPEP section 2113.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Coscia et al. (6,463,662), hereinafter Coscia. Regarding claim 1, Coscia teaches a one-piece spoon

Art Unit: 3724

and straw combination utensil 10 including a tubular handle portion 30 and a bowl portion 20, wherein the bowl portion is formed of a front wall and a back wall. Coscia also teaches that the front and back walls of the bowl portion are connected by a left curved wall and a right curved wall and defining a lumen 40 between such front and back walls. The front wall is connected to the back wall by the left and right curved walls disposed on both sides of lumen 40. See Figs. 5 and 6 and col. 2, lines 1-59 in Coscia. With respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does not depend on the process of making the spoon and straw utensil. See MPEP section 2113.

Regarding claims 2 and 10, Coscia teaches everything noted above except that the utensil is formed on continuous corrugating equipment having pairs of molds and the extrusion process orients the resin molecules for stiffness in the machine direction while expanding the resin extrusion to fill the molds orients the resin molecules for stiffness in the direction traverse to the machine. However, with respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does not depend on the process of making the spoon and straw utensil. See MPEP section 2113.

To the degree that it could be argued that McCrea spoon and straw combination utensil is not a one-piece utensil, the rejection below is applied.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3724

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCrea in view of Lewis (5,272,321) or Coscia. Regarding claim 1 McCrea teaches a spoon and straw 10 including a tubular portion 22 and a bowl portion 14, wherein the bowl portion 14 is formed of a front wall and a back wall. McCrea also teaches that the front and back walls of the bowl portion 14 are being connected by a left curved wall and a right curved wall and defining a lumen 16 between such front and back walls. See Figs. 1-4 and col. 2, lines 3-57 and col. 3, lines 1-30 in McCrea. McCrea does not implicitly teach that the spoon and straw combination utensil is a one-piece utensil. However, the use of a one piece spoon and straw combination utensil is well known in the art such as taught by Lewis or Coscia. Lewis teaches a spoon and straw combination utensil that can be made as a one-piece utensil or a two-piece utensil. See Figs. 1-9 and col.4, lines 6-15 in Lewis. Coscia also teaches a spoon-straw combination that is molded as a one-piece instrument. See Figs. 1-6 and col. 1, lines 6-10 in Coscia. It would have been obvious to a person of ordinary skill in the art to make McCrea's spoon and straw utensil as a one-piece utensil as taught by Lewis or Coscia in order to reduce time that is needed to manufacture a spoon and straw combination utensil. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the spoon and straw combination utensil as a one-piece instrument, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). With respect to the process of forming the spoon

Art Unit: 3724

straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does not depend on the process of making the spoon and straw utensil. See MPEP section 2113. In addition, Official action is taken that forming of resin on extrusion forming equipment is well known in the art such as taught by Mayer.

Regarding claims 2 and 10, McCrea teaches everything noted above except that the utensil is formed on continuous corrugating equipment having pairs of molds and the extrusion process orients the resin molecules for stiffness in the machine direction while expanding the resin extrusion to fill the molds orients the resin molecules for stiffness in the direction traverse to the machine. However, with respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does not depend on the process of making the spoon and straw utensil. See MPEP section 2113. In addition, Official notice is taken that the use of continuous corrugating equipment for forming a tube or the like is well known in the art such as taught by Dickhut et al. (4,439,130), Bayman et al. (3,605,817), and Iwata et al. (4,724,111).

***Response to Amendment***

8. Applicant's arguments filed on 02/10/05 have been fully considered but they are not persuasive.

Applicant's argument that McCrea does not teach that the spoon and straw combination utensil is made of a one-piece instrument and the utensil is not formed of resin on extrusion forming equipment is not persuasive. McCrea teaches baffle 32, which is disposed between neck 26 and stem 27 and connects neck 26 and stem 27 together, can be alternatively manufactured as internal mold to the bowl end or the mouth end of straw and spoon utensil

Art Unit: 3724

10. Therefore, in this case, spoon and straw combination utensil is made of one piece rather than three pieces, since baffle 32 is molded to the bowl end or mouth end and does not need to be separated from the utensil or disposed between the neck and the stem of the utensil.

See col. 2, lines 30-39 in McCrea. With respect to the process of forming the spoon straw and utensil by resin on extrusion equipment, the patentability of the spoon and straw utensil does not depend on the process of making the spoon and straw utensil. See MPEP section 2113.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Richardson et al. (D458,809), Green (Des. 330,481), Norman (1,666,106), Frodsham (Des. 259,533, 3,925,890, and 3,648,369), Banach (6,676,032), Marx (674,446), and Lynch (Des. 370,587) teach a spoon and straw combination utensil.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Art Unit: 3724

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (too-free).



Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700

GA/ga

April 26, 2005